

**San Joaquin River Issues--Oral Arguments
Monday-Wednesday, October 21-23, 2002**

SWRCB Cases, No. JC 4118

Judge Roland, Candee, Presiding

QUESTIONS FOR ORAL ARGUMENTS

1. In addition to other conclusions that might be drawn from Table 4 of Pacific Coast Federation's reply brief, does this Table indicate that witnesses Rosekrans and Steiner both agree that the SJRA provides higher flows than would otherwise be available under Alternative 2 (the one closest to D-1641)?
2. Explain the impact of implementation of the San Joaquin River Agreement on releases from New Melones Dam?
3. Discuss this sentence from D-1841, page 86: "This decision conforms Condition 5 of D-1422 to the southern Delta salinity objectives in the 1995 Bay-Delta Plan and to the current Basin Plan."
4. Is the SWRCB's "direction" to a regional water quality board sufficient to impose a legal obligation upon the regional board to perform? If this Court remanded to the state board requiring the regional board to perform, would the regional board be bound?
5. To require the promulgation of water quality objectives and measures upstream of Vernalis, is the more appropriate remedy a petition for writ of mandate directed to the regional board?
6. D-1641 indicates that 72% of the salt load at Vernalis comes from lands which receive 70% of their water supply from the CVP (page 82). The Board also indicates that a long-term drainage management program must be developed, but only appears to urge the Bureau to "reevaluate the alternatives . . . and pursue appropriate permits" (page 85). Does the weight of the evidence require a more explicit condition on CVP permits, such as a requirement that an appropriate drain be constructed by a date certain? Is such a drainage condition required (a) for reasonable use of water; and/or (b) as a reasonable means of diversion?
7. Many of Central Delta Water Agency's arguments appear premature. In the event Delta water users are unable to exercise their water rights because of diminished flows, should their claims be raised in a priority call or enforcement action initiated at that time? Please cite to specific statutory authority, if any, for such an enforcement action.
8. Please explain in more detail the physical relationship between the tidal barriers and operations under the joint point of diversion.
9. At one time, Congress appears to have delegated to the Secretary of the Interior the determination of how much New Melones water could be used for salinity control. See AR/14/2640/20 & AR/14/2643/1. In this case, would stricter SWRCB regulation constitute a frustration of explicit federal purposes or has the CVPIA superceded this apparent limitation on state authority?

10. State Respondents argue that a physical solution is not available to satisfy the riparian rights of Delta users. Why is a physical solution not required for in-Delta appropriate uses? Is there precedent for a physical solution being imposed in a mandate or administrative review proceeding such as this?
11. Some of the responding parties argue that riparian rights have not been proven in this proceeding. In the D-1641 hearings, the Board appears not to have rejected the legal basis of those parties claiming riparian rights. Has any argument about the existence of such riparian claims been waived? Has the Board made an implicit determination of the existence of those rights?
12. Is there additional authority under the Clean Water Act, other than section 102(b)(1), supportive of the proposition that dilution of pollution by additional flows is impermissible?
13. Elaborate on the context for the "interim" contracts executed for New Melones water.
14. State Respondents and others make an appealing argument that Congress authorized the use of New Melones water for salinity control, the SWRCB long-ago conditioned the Bureau's permits in that regard, the contracts are subject to those conditions, and, in any event, the flows are relatively unchanged. Petitioners may wish to respond to these points.

Additional questions may be added during the week of October 14-18, 2002. Please check back for such additional questions.